



CALIFORNIA HEALTH & SAFETY CODE

CHAPTER 6.75

Petroleum Underground Storage Tank Cleanup Fund

JANUARY 2002

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS

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State Water Resources Control Board
Division of Clean Water Programs
UST Cleanup Fund
P. O. Box 944212
Sacramento, CA 94244-2120

ARTICLE 1. FINDINGS AND DECLARATIONS

§ 25299.10. Title of chapter; legislative findings and declarations

(a) This chapter shall be known, and may be cited, as the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989.

(b) The Legislature hereby finds and declares all of the following:

(1) In order to help ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment and provides for the rapid distribution of cleanup funds that will assist the state's recovery, it is in the best interest of the public that the board devote maximum effort to the expedited processing and payment of all claims filed pursuant to Sections 25299.57 and 25299.58.

(2) It is estimated that approximately 90 percent of the underground storage tanks in the state contain petroleum and the remaining 10 percent of the tanks contain various chemical constituents.

(3) Although the exact extent of the problem is unknown, it is thought that a significant number of the underground storage tanks containing petroleum in the state may be leaking.

(4) In recent years, owners or operators of underground storage tanks have been unable to obtain affordable environmental impairment liability insurance coverage to pay for corrective action or the obtainable coverage has been outside their financial means.

(5) There are long-term threats to public health and water quality if a comprehensive, uniform, and efficient corrective action program is not established.

(6) It is in the best interest of the health and safety of the people of the state to establish a fund to pay for corrective action where coverage is not available.

(7) A uniform, comprehensive, and efficient program establishing financial responsibility and corrective action requirements for leaking underground storage tanks containing petroleum will enable private commercial insurers to expand the availability and affordability of insurance coverage.

(8) An efficient program of establishing corrective action requirements and funds or insurance coverage should encourage corrective action to be taken in the first instance by the owner or operator of the leaking underground storage tank containing petroleum.

(9) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(10) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to Chapter 6.7 (commencing with Section 25280), to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

(11) It is in the public interest for the state to provide financial assistance to small businesses and farms which have limited financial resources, to ensure timely compliance with the law governing underground storage tanks, and to ensure the adequate protection of groundwater.

(12) Nothing in this chapter shall be construed as waiving any immunity provided the state or its departments and agencies by the United States Constitution.

ARTICLE 2. DEFINITIONS

§ 25299.11. Construction of chapter

Unless the context indicates otherwise, the definitions in this article govern the construction of this chapter.

§ 25299.11.5. Adjudicative proceeding

"Adjudicative proceeding" has the same meaning as defined in Section 11405.20 of the Government Code.

§ 25299.12. Bodily injury

"Bodily injury" has the same meaning as used in Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code and the regulations adopted pursuant thereto.

§ 25299.13. Claim

"Claim" means a submittal to the fund for the reimbursement of costs incurred due to an occurrence. A claim consists of several documents, including, but not limited to, the fund application, reimbursement requests, and verification documents.

§ 25299.14. Corrective action

"Corrective action" includes, but is not limited to, evaluation and investigation of an unauthorized release, initial corrective actions measures, as specified in the federal act, and any actions necessary to investigate and remedy any residual effects remaining after the initial corrective action. Except as provided in the federal act, "corrective action" does not include actions to repair or replace an underground storage tank or its associated equipment.

§ 25299.15. Environmental impairment liability insurance

"Environmental impairment liability insurance" means liability insurance against liability for bodily injury, as defined in Section 25299.12, and for property damage, as defined in Section 25299.23, arising from an occurrence, as defined in Section 25299.19.

§ 25299.16. Federal act

"Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented, and the regulations adopted pursuant thereto.

§ 25299.17. Fund

"Fund" means the Underground Storage Tank Cleanup Fund created pursuant to Section 25299.50.

§ 25299.18. MTBE

"MTBE" means methyl tertiary butyl ether.

§ 25299.19. Occurrence

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in an unauthorized release of petroleum from an underground storage tank. Unauthorized releases at the same site which require only a single site investigation shall be considered as one occurrence. An unauthorized release subsequent to a previous unauthorized release at the same site shall only be considered a separate occurrence if an initial site investigation has been completed for the prior unauthorized release.

§ 25299.20. Operator

"Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank containing petroleum. "Operator" includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

§ 25299.21. Owner

"Owner" means the owner of an underground storage tank containing petroleum. "Owner" includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

§ 25299.22. Petroleum

"Petroleum" means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

§ 25299.23. Property damage

"Property damage" has the same meaning as used in Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code and the regulations adopted pursuant thereto.

§ 25299.23.1. Site

(a) "Site" means the parcel of real property at which an underground storage tank is located.

(b) If underground storage tanks are located at adjacent parcels of real property, the adjacent parcels together constitute one site if both of the following apply:

(1) The underground storage tanks are, or have been, operated by the same person.

(2) The adjacent parcels are under common ownership or control.

(c) Notwithstanding subdivision (a), the board may consider a parcel of real property as consisting of multiple sites, corresponding to the number of distinct underground storage tank operations at the parcel, if the board makes both of the following findings:

(1) There is more than one underground storage tank located at the parcel.

(2) Each separately operated underground storage tank or group of underground storage tanks is not, and has not been, operated by a person who is operating or has operated another underground storage tank at the same parcel.

§ 25299.24. Tank

"Tank", "underground storage tank," "underground tank system," and "tank system" have the same meaning as defined in Chapter 6.7 (commencing with Section 25280), except that these terms mean only those tanks that contain only petroleum or, consistent with the federal act, a mixture of petroleum with de minimis quantities of other regulated substances.

§ 25299.25. Other definitions

For purposes of this chapter, "board," "regional board," "local agency," "person," "unauthorized release," and "facility" shall have the same meanings as defined in Section 25281. Any other term used in this chapter which is not defined by this article has the same meaning as defined in Section 25281.

ARTICLE 3. FINANCIAL RESPONSIBILITY**§ 25299.30. Compliance with financial responsibility provisions**

Every owner and operator shall comply with Section 25299.31 at the time prescribed in the federal act for the establishment and maintaining of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank, or when the tank is first filled, for use, with petroleum.

§ 25299.31. Evidence of financial responsibility; demonstration of compliance

(a) Every owner and operator shall establish and maintain evidence of financial responsibility, as provided in this article, for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank.

(b) If the owner and the operator are separate persons, either the owner or the operator shall demonstrate compliance with subdivision (a).

(c) An owner may comply with this article by entering into an agreement with the operator of the tank requiring the operator to demonstrate compliance with subdivision (a). However, both the owner and the operator are in violation of subdivision (a) if evidence of financial responsibility is not established and maintained in accordance with this article.

§ 25299.32. Level of financial responsibility; periodic increases in minimum level

(a) (1) Claimants who meet the qualifications of paragraph (1) of subdivision (b) of Section 25299.52 shall be deemed in compliance with Section 25299.31 if the claimant is eligible for reimbursement from the fund pursuant to Section 25299.54 and subdivision (d) of Sections 25299.57 and 25299.58.

(2) For claimants who meet the qualifications of paragraph (2) or (3) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least five thousand dollars (\$5,000) for each occurrence and at least five thousand dollars (\$5,000) annual aggregate coverage for taking corrective action.

(3) For claimants who meet the qualifications of paragraph (4) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least ten thousand dollars (\$10,000) for each occurrence, and at least ten thousand dollars (\$10,000) annual aggregate coverage for taking corrective action.

(b) The level of financial responsibility required to be obtained pursuant to Section 25299.31 for each occurrence for bodily injury and property damage shall be in the amount specified by the board in the regulations adopted pursuant to Section 25299.77.

(c) The level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be in the amount specified by the board for annual aggregate coverage for both corrective action and bodily injury and property damage.

(d) The board may periodically increase the minimum level of financial responsibility specified in subdivision (a) upon its determination that private insurance is available and affordable.

(e) The changes made to this section by the act adding this subdivision shall apply to all claimants with claims, or portions of claims, for corrective action at sites that have not been completed, and for which reimbursement by the fund has not been fully paid by the board.

§ 25299.33. Establishment of evidence by means specified in federal act; submission

(a) An owner and operator subject to Section 25299.30 may establish evidence of financial responsibility pursuant to this article by any one or more of the means specified in the federal act.

(b) An owner or operator shall submit evidence of financial responsibility on a prepared form to the local agency which has issued a permit for the operation of the tank pursuant to Section 25284.

§ 25299.34. Guarantor's liability; limitations; definition

(a) The total liability of any guarantor under this chapter is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator pursuant to this article. This section does not limit any other state or federal statutory, contractual, or common-law liability of a guarantor to its owner or operator, including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim.

(b) For the purposes of this section, "guarantor" means any person, including the insurance fund or the fund, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to Section 25299.31.

ARTICLE 4. CORRECTIVE ACTION

§ 25299.36. Corrective action by regional board or local agency; oral contracts

The board, a regional board, or a local agency may undertake or contract for corrective action pursuant to subdivision (g) of Section 25299.37 or if a situation exists which requires prompt action by the board, a regional board, or local agency to protect human health or the environment. At the request of the board or a regional board, the Department of General Services may enter into a contract on behalf of the board or a regional board and acting as the agent of the board or a regional board. Notwithstanding any other provision of law, if a situation requires prompt action by the board or a regional board

to protect human health or the environment, the board or a regional board may enter into oral contracts for this work, and the contracts, whether written or oral, may include provisions for equipment rental and, in addition, the furnishing of labor and materials necessary to accomplish the work. These contracts for corrective action by the board or a regional board are exempt from approval by the Department of General Services if the situation requires prompt action to protect human health or the environment.

§ 25299.37. Compliance with applicable regulations; work plan for corrective actions; appeal and review; failure to comply

(a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this article and regulations adopted pursuant to Section 25299.77. In adopting regulations pursuant to Section 25299.77, the board shall develop corrective action requirements for health hazards and protection of the environment, based on the severity of the health hazards and the other factors listed in subdivision (b).

(b) Any corrective action conducted pursuant to this chapter shall ensure protection of human health, safety, and the environment. The corrective action shall be consistent with any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code.

(c) (1) When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment and investigation, pursuant to an oral or written order, direction, notification, or approval issued pursuant to this section, or pursuant to a cleanup and abatement order or other oral or written directive issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, the owner, operator, or other responsible party shall prepare a work plan that details the corrective action the owner, operator, or other responsible party shall take to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.77.

(2) The work plan required by paragraph (1) shall be prepared in accordance with the regulations adopted pursuant to Section 25299.77. The work plan shall include a schedule and timeline for corrective action.

(3) At the request of the owner, operator, or other responsible party, the local agency, the board, or the regional board shall review a work plan prepared pursuant to paragraph (1) and either accept the work plan, if it meets the requirements of the section, or disapprove the work plan if it does not meet those requirements. If the local agency, board, or the regional board accepts the work plan, it shall indicate to the owner, operator, or other responsible party, the actions or other elements of the work plan that are, in all likelihood, adequate and necessary to meet the requirements of this section, and the actions and elements that may be unnecessary. If the local agency, board, or regional board disapproves the work plan, it shall state the reasons for the disapproval.

(4) In the interests of minimizing environmental contamination and promoting prompt cleanup, the responsible party may begin implementation of the proposed actions after the work plan has been submitted but before the work plan has received regulatory agency acceptance, except that implementation of the work plan may not begin until 60 calendar days from the date of submittal, unless the responsible party is otherwise directed in writing by the regulatory agency. However, before beginning implementation pursuant to this paragraph, the responsible party shall notify the regulatory agency of the intent to initiate proposed actions set forth in the submitted work plan.

(5) The owner, operator, or other responsible party shall conduct corrective actions in accordance with the work plan approved pursuant to the section.

(6) (A) The local agency, the board, or the regional board shall advise and work with the owner, operator, or other responsible party on the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations or any successor regulation. Regional board staff and local agency staff shall work with the responsible party and fund staff to obtain preapproval for the responsible party. The fund staff shall grant or deny a request for preapproval within 30 calendar days after the date a request is received. If fund staff denies a request for preapproval or fails to act within 30 calendar days after receiving the request, an owner, operator, or other responsible party who has prepared a work plan that has been reviewed and accepted pursuant to paragraph (3), and is denied preapproval of corrective action costs for one or more of the actions required by the work plan, may petition the board for review of the request for preapproval. The board shall review the petition pursuant to Section 25299.56, and for that purpose the petition for review of a request for preapproval of corrective action costs shall be reviewed by the board in the same manner as a petition for review of an unpaid claim.

(B) If the board receives a petition for review pursuant to subparagraph (A), the board shall review the request for preapproval and grant or deny the request pursuant to this subparagraph and subparagraph (C). The board shall deny the request for preapproval if the board makes one of the following findings:

(i) The petitioner is not eligible to file a claim pursuant to Article 6 (commencing with Section 25299.50).

(ii) The petitioner failed to submit one or more of the documents required by the regulations adopted by the board governing preapproval.

(iii) The petitioner failed to obtain three bids or estimates for corrective action costs and, under the circumstances pertaining to the corrective action, there is no valid reason to waive the three-bid requirement pursuant to the regulations adopted by the board.

(C) If the board does not deny the request for preapproval pursuant to subparagraph (B), the board shall grant the request for preapproval. However, the board may modify the request by denying preapproval of corrective action costs or reducing the preapproval amount of those costs for any action required by the work plan, if the board finds that the fund staff has demonstrated either of the following:

(i) The amount of corrective action reimbursement requested for the action is not reasonable. In determining if the fund staff has demonstrated that the amount of reimbursement requested for an action is not reasonable, the board shall use, when available, recent experience with bids or estimates for similar actions.

(ii) The action required in the work plan is, in all likelihood, not necessary for the corrective action to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.77.

(7) When the local agency, the board, or the regional board requires a responsible party to conduct corrective action pursuant to this article, it shall inform the responsible party of its right to request the designation of an administering agency to oversee the site investigation and remedial action at its site pursuant to Section 25262 and, if requested to do so by the responsible party, the local agency shall provide assistance to the responsible party in preparing and processing a request for that designation.

(d) Notwithstanding Section 25297.1, the board shall implement a procedure that does not assess an owner, operator, or responsible party taking corrective action pursuant to this chapter for the costs of a local oversight program pursuant to paragraph (4) of subdivision (d) of Section 25297.1. The board shall institute an internal procedure for assessing, reviewing, and paying those costs directly between the board and the local agency. At least

15 days before the board proposes to disapprove the reimbursement of corrective action costs which have been incurred on the grounds that the costs were unreasonable or unnecessary, the board shall issue a notice advising the claimant and the lead agency of the proposed disallowance, to allow review and comment.

(e) A person to whom an order is issued pursuant to subdivision (c), shall have the same rights of administrative and judicial appeal and review as are provided by law for cleanup and abatement orders issued pursuant to Section 13304 of the Water Code.

(f) Until the board adopts regulations pursuant to Section 25299.77, the owner, operator, or other responsible party shall take corrective action in accordance with Chapter 6.7 (commencing with Section 25280) and the federal act.

(g) If a person to whom an order is issued pursuant to subdivision (c) does not comply with the order, the board, a regional board, or the local agency may undertake or contract for corrective action and recover costs pursuant to Section 25299.70.

(h) The following uniform closure letter shall be issued to the owner, operator or other responsible party taking corrective action at an underground storage tank site by the local agency or the regional board with jurisdiction over the site, or the board, upon a finding that the underground storage tank site is in compliance with the requirements of subdivisions (a) and (b) and with any corrective action regulations adopted pursuant to Section 25299.77 and that no further corrective action is required at the site:

“[Case File Number]

Dear [Responsible Party]

This letter confirms the completion of a site investigation and corrective action for the underground storage tank(s) formerly located at the above-described location. Thank you for your cooperation throughout this investigation. Your willingness and promptness in responding to our inquiries concerning the former underground storage tank(s) are greatly appreciated.

Based on information in the above-referenced file and with the provision that the information provided to this agency was accurate and representative of site conditions, this agency finds that the site investigation and corrective action carried out at your underground storage tank(s) site is in compliance with the requirements of subdivisions (a) and (b) of Section 25299.37 of the Health and Safety Code and with corrective action regulations adopted pursuant to Section 25299.77 of the Health and Safety Code and that no further action related to the petroleum release(s) at the site is required.

This notice is issued pursuant to subdivision (h) of Section 25299.37 of the Health and Safety Code.

Please contact our office if you have any questions regarding this matter.

Sincerely,

[Name of Board Executive Director, Regional Board Executive Officer or Local Agency Director]"

§ 25299.37.1. Soil and groundwater testing for MTBE; prerequisite to closure letters

(a) No closure letter pursuant to this chapter shall be issued unless the soil or groundwater, or both, where applicable, at the site have been tested for MTBE and the results of that testing are known to the regional board.

(b) Subdivision (a) does not apply to a closure letter for a tank case for which the board, a regional board, or local agency determines that the tank has only contained diesel or jet fuel.

§ 25299.37.2. Corrective actions or site closure proposals; notification to all current record owners of fee title

(a) The local agency, the board, or a regional board shall not consider corrective action or site closure proposals from the primary or active responsible party, issue a closure letter, or make a determination that no further corrective action is required with respect to a site upon which there was an unauthorized release of petroleum from an underground storage tank subject to this chapter unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the local agency, board, or regional board.

(b) The local agency, board, or regional board shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

§ 25299.38.1. Guidelines for investigation and cleanup of MTBE; cleanup standards

(a) The board, in consultation with the State Department of Health Services, shall develop guidelines for the investigation and cleanup of MTBE and other ether-based oxygenates in groundwater. The guidelines shall include procedures for determining, to the extent practicable, whether the contamination associated with an unauthorized release of MTBE is from the tank system prior to the system's most recent upgrade or replacement or if the contamination is from an unauthorized release from the current tank system.

(b) The board, in consultation with the State Department of Health Services, shall develop appropriate cleanup standards for contamination associated with a release of MTBE.

§ 25299.39. Suspension of corrective action or investigation work

(a) (1) Unless the board, in consultation with local agencies and the regional board determines that a site is an emergency site, the board, at the request of an eligible responsible party, may suspend additional corrective action or investigation work at a site, based on a preliminary site assessment conducted in accordance with the regulations adopted by the board implementing Section 25299.37, but the board shall not suspend any of the following activities pursuant to this section:

(A) Removal of, or approved modifications of, existing tanks.

(B) Excavation of petroleum saturated soil or removal of excess petroleum from saturated soil.

(C) Removal of free product from the saturated and unsaturated zones.

(D) Periodic monitoring to ensure that released petroleum is not migrating in an uncontrolled manner that will cause the site to become an emergency site.

(2) For purposes of this subdivision, "emergency site" means a site that, because of an unauthorized release of petroleum, meets one of the following conditions:

(A) The site presents an imminent threat to public health or safety or the environment.

(B) The site poses a substantial probability of causing a condition of contamination or nuisance, as defined in Section 13050 of the Water Code, or of causing pollution of a source of drinking water at a level that is a violation of a primary or secondary drinking water standard adopted by the State Department of Health Services pursuant to Chapter 4 (commencing with Section 116270) of Part 12 of Division 104.

(b) The suspension shall continue until one of the following occurs:

(1) The board provides the eligible responsible party with a letter of commitment that the party will receive reimbursement for the corrective action.

(2) The responsible party requests in writing that the suspension be terminated and that the work continue.

(3) The fund is no longer in existence.

(c) The board shall adopt regulations that specify the conditions under which a site is an imminent threat to public health or safety or to the environment or poses a substantial probability of causing a condition of

contamination, nuisance, or pollution as specified in paragraph (2) of subdivision (a). The board shall not suspend corrective action or investigation work at any site pursuant to this section until the effective date of the regulations adopted by the board pursuant to this subdivision.

§ 25299.39.1. Discharges; data storage and retrieval; access

(a) The board shall develop, implement, and maintain a system for storing and retrieving data from cases involving discharges of petroleum from underground storage tanks to allow regulatory agencies and the general public to use historic data in making decisions regarding permitting, land use, and other matters. The system shall be accessible to government agencies and the general public. A site included in the data system shall be clearly designated as having no residual contamination if, at the time the site is closed or at any time after closure, the board determines that no residual contamination remains on the site.

(b) For purposes of this section, "residual contamination" means the petroleum that remains on a site after a corrective action has been carried out and the cleanup levels established by the corrective action plan for the site, pursuant to subdivision (g) of Section 2725 of Title 23 of the California Code of Regulations, have been achieved.

§ 25299.39.2. Notice to holders of active letters of commitment which are over five years old; review of case history; closure of case; petition for review

(a) The manager responsible for the fund shall notify tank owners or operators who have an active letter of commitment that has been in an active status for five years or more and shall review the case history of their tank case on an annual basis unless otherwise notified by the tank owner or operator within 30 days of the notification. The manager, with approval of the tank owner or operator, may make a recommendation to the board for closure. The board may close the tank case or require the closure of a tank case at a site under the jurisdiction of a regional board or local agency implementing a local oversight program under Section 25297.1 if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25299.37 and the corrective action regulations adopted pursuant to Section 25299.77. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program under Section 25297.1, the board may recommend to the local agency that the case be closed.

(b) (1) Any owner or operator, or other responsible party who has a tank case and who believes that the corrective action plan for the site has been satisfactorily implemented, but where closure has not been granted, may petition the board for a review of the case, whether or not the petitioner is eligible for reimbursement from the fund pursuant to Section 25299.54.

(2) Upon receipt of a petition pursuant to paragraph (1), the board may close the tank case or require closure, if the tank case is at a site under the jurisdiction of a regional board or a local agency that is implementing a local oversight program under Section 25297.1 and if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25299.37 and the corrective action regulations adopted pursuant to Section 25299.77. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program pursuant to Section 25297.1, the board may recommend to the local agency that the tank case be closed.

(c) Any aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to subdivision (a) or (b), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(d) The authority provided under this section does not limit a person's ability to petition the board for review under any other state law.

§ 25299.39.3. Access to property

The board, a regional board or local agency shall be permitted reasonable access to property owned or possessed by an owner, operator, or responsible party as necessary to perform corrective action pursuant to Sections 25299.36 and 25299.37. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, or the environment, the board, a regional board or local agency may enter the property without consent or the issuance of a warrant.

ARTICLE 5. FEES**§ 25299.40. Storage fees do not constitute tax**

The Legislature hereby declares that the storage fees imposed by this article do not constitute a tax and are not collected for purposes of increasing state revenues pursuant to Section 3 of Article XIII A of the California Constitution.

§ 25299.41. Storage fees; amount; payment

For purposes of implementing this chapter, every owner of an underground storage tank for which a permit is required pursuant to Section 25284 shall pay a storage fee of six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank which he or she owns. The fee imposed pursuant to this section shall be paid to the State Board of Equalization pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

§ 25299.42. Regulations; collection and deposit of fees

(a) The State Board of Equalization may adopt regulations to carry out Section 25299.41, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

(b) The State Board of Equalization shall collect the fee imposed by this article commencing on the first day of the first calendar quarter which begins more than 90 days after the effective date of the act adding this article.

(c) The State Board of Equalization shall deposit all fees collected pursuant to this article in the fund.

§25299.43. Storage fee for petroleum placed in underground storage tank; purpose; rate

(a) To implement the changes to this chapter made by the act adding this section, and consistent with Section 25299.40, effective January 1, 1995, every owner subject to Section 25299.41 shall pay a storage fee of one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank which the person owns, in addition to the fee required by Section 25299.41. The fee imposed pursuant to this section shall be paid to the State Board of Equalization pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code in the same manner as, and consistent with, the fees imposed pursuant to Section 25299.41.

(b) On and after January 1, 1996, the storage fee imposed pursuant to subdivision (a) shall be increased by two mills (\$0.002) for each gallon of petroleum placed in an underground storage tank.

(c) On and after January 1, 1997, the storage fee imposed pursuant to subdivisions (a) and (b) shall be increased by three mills (\$0.003) for each gallon of petroleum placed in an underground storage tank.

(d) The State Board of Equalization shall amend the regulations adopted pursuant to Section 25299.41 to carry out this section.

ARTICLE 6. UNDERGROUND STORAGE TANK CLEANUP FUND**§ 25299.50. Underground storage tank cleanup fund; deposits; reallocation of funds; reports**

(a) The Underground Storage Tank Cleanup Fund is hereby created in the State Treasury. The money in the fund may be expended by the board, upon appropriation by the Legislature, for purposes of this chapter. From time to time, the board may modify existing accounts or create accounts in the fund or other funds administered by the board, which the board determines are appropriate or necessary for proper administration of this chapter.

(b) Except for funds transferred to the Drinking Water Treatment and Research Fund created pursuant to subdivision (c) of Section 116367, all of the following amounts shall be deposited in the fund:

- (1) Money appropriated by the Legislature for deposit in the fund.
- (2) The fees, interest, and penalties collected pursuant to Article 5 (commencing with Section 25299.40).
- (3) Notwithstanding Section 16475 of the Government Code, any interest earned upon the money deposited in the fund.
- (4) Any money recovered by the fund pursuant to Section 25299.70.
- (5) Any civil penalties collected by the board or regional board pursuant to Section 25299.76.

(c) (1) Notwithstanding subdivision (a), any funds appropriated by the Legislature in the annual Budget Act for payment of a claim for the costs of a corrective action in response to an unauthorized release, that are encumbered for expenditure for a corrective action pursuant to a letter of credit issued by the board pursuant to subdivision (e) of Section 25299.57, but are subsequently not expended for that corrective action claim, may be reallocated by the board for payment of other claims for corrective action pursuant to Section 25299.57.

(2) Notwithstanding Section 7550.5 of the Government Code, the board shall report at least once every three months on the implementation of this subdivision to the Senate Committee on Budget and Fiscal Review, the Senate Committee on Environmental Quality, the Assembly Committee on

Budget, and the Assembly Committee on Environmental Safety and Toxic Materials, or to any successor committee, and to the Director of Finance.

§ 25299.50.1. Fire Safety Subaccount; payment of specified claims

(a) For purposes of this section, “fire safety agency” means a city fire department, county fire department, city and county fire department, fire protection district, a joint powers authority formed for the purpose of providing fire protection services, or any other local agency that normally provides fire protection services.

(b) The Fire Safety Subaccount is hereby created in the Underground Storage Tank Cleanup Fund, for expenditure by the board to pay a claim described in paragraph (4) of subdivision (b) of Section 25299.52 that was filed before January 1, 2000, by a fire safety agency. Except as provided in subdivision (d), the board shall pay such a claim filed by a fire safety agency only from funds appropriated from the Fire Safety Subaccount.

(c) The sum of five million dollars (\$5,000,000) of the moneys in the fund derived from the sources described in paragraphs (1) to (4), inclusive, of subdivision (b) of Section 25299.50 is hereby transferred from the fund to the Fire Safety Subaccount, and appropriated therefrom to the board, for expenditure pursuant to this section for a claim filed by a fire safety agency specified in subdivision (b).

(d) The unpaid amount of any claim filed by a fire safety agency specified in subdivision (b), for which a closure letter has not been issued pursuant to subdivision (h) of Section 25299.37 on or before January 1, 2006, shall not be payable from the Fire Safety Subaccount but shall revert to the priority ranking for claims specified in Section 25299.52.

(e) The payment of claims pursuant to this section shall not affect the board’s payment of claims filed pursuant to paragraph (1), (2), or (3) of subdivision (b) of Section 25299.52.

(f) Any funds remaining in the Fire Safety Subaccount on January 1, 2006, shall be transferred to the fund.

(g) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

§ 25299.51. Expenditure of funds

The board may expend the money in the fund for all of the following purposes:

(a) In addition to the purposes specified in subdivision (c),(d) and (e), for expenditure by the board for the costs of implementing this chapter which

shall include costs incurred by the board pursuant to Article 8.5 (commencing with Section 25299.80.1).

(b) To pay for the administrative costs of the State Board of Equalization in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of corrective action pursuant to Section 25299.36, up to one million five hundred thousand dollars (\$ 1,500,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks, by a local agency, as authorized by Section 25297.1 or by any other provision of law, except that, for the purpose of expenditure of these funds, only underground storage tanks, as defined in Section 25299.24, shall be the subject of the agreement.

(e) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for the purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of corrective action pursuant to subdivision (g) of Section 25299.37.

(i) To pay claims pursuant to Section 25299.58

§ 25299.52. Award of claims; priority ranking list; lawsuit by or against fund

(a) The board shall adopt a priority ranking list at least annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) Except as provided in subdivision (c), in awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:

(1) Owners of tanks who are eligible to file a claim pursuant to subdivision (e) of Section 25299.54.

(2) Owners and operators of tanks that are either of the following:

(A) An owner or operator of a tank that is a small business, by meeting the requirements of subdivision (d) of Section 14837 of the Government Code. An owner or operator that meets that definition of small business, but who is domiciled or has its principal office outside of the state, shall be classified in this category if the owner or operator otherwise meets the requirements of subdivision (d) of Section 14837 of the Government Code with regard to the number of employees and the total annual revenues received.

(B) An owner or operator that is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars (\$7,000,000). In determining the amount of a nonprofit organization's annual revenues, the board shall calculate only those revenues directly attributable to the particular site at which the tank or tanks for which the claim is submitted are located.

(3) Owners or operators of tanks that are any of the following:

(A) The owner or operator owns and operates a business that employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(B) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees. In determining the number of employees employed by a nonprofit organization, the board shall calculate only those employees employed at the particular site at which a tank for which the claim is being submitted is located.

(4) All other tank owners and operators.

(c) (1) In any year in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking list award limitations set forth in subdivision (b), the board shall allocate between 14 and 16 percent of the total amount of funds committed for that year to each category that is not otherwise entitled to at least that level of committed funding for that year.

(2) If the total amount of claims outstanding in one or more of the priority categories specified in paragraph (3) or (4) of subdivision (b) is less than 15 percent of the total amount annually appropriated from the fund for the purpose of awarding claims, the board shall reserve for making claims in that category only the amount that is necessary to satisfy the outstanding claims in that category.

(d) The board shall give priority to a claim that is filed before September 24, 1993, by a city, county, or district that is eligible for payment pursuant to Section 25299.54 in the following manner:

(1) The board shall determine whether the priority category specified for a city, county, or district pursuant to subparagraph (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph (3), of subdivision (b) requires that the priority ranking of the claim be changed.

(2) If the priority ranking of the claim is changed and the claim is placed into either the priority category specified in subparagraph (B) of paragraph (2), or specified in subparagraph (B) of paragraph (3), of subdivision (b), the board shall pay all other claims that were assigned to that priority category prior to January 1, 2000, before paying the claim of the city, county, or district.

(e) The board may, to carry out the intent specified in paragraph (1) of subdivision (b) of Section 25299.10 and to expedite the processing and awarding of claims pursuant to Sections 25299.57 and 25299.58, implement the contracting procedures required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, as may be necessary, to alleviate the claims processing and award backlog. If, at the conclusion of any fiscal year, 25 percent or more of the funds appropriated annually for awards to claimants during that year have not actually been obligated by the board, the board shall, at its next regularly scheduled meeting, determine, in a public hearing, whether, given the circumstances of the awards backlog, it is appropriate to implement those contracting procedures for some, or all, of the claims filed with the board.

(f) For purposes of this section, the following definitions shall apply:

(1) "Nonprofit organization" means a nonprofit public benefit organization incorporated pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code.

(2) "Annual revenue," with respect to public entities, means the total annual general purpose revenues, excluding all restricted revenues over which the governing agency has no discretion, as reported in the Annual Report of Financial Transactions submitted to the Controller, for the latest fiscal year ending prior to the date the fund application was filed.

(3) "Annual revenue," with respect to nonprofit organizations, means the total annual revenues, as shown in an annual fiscal report filed with the Registry of Charitable Trusts of state and federal tax records, based on the latest fiscal year ending prior to the date the fund application was filed.

(4) "General purpose revenues," as used in paragraph (2), means revenues consisting of all of the following: secured and unsecured revenues; less than countywide funds, secured and unsecured; prior year secured and unsecured penalties and delinquent taxes; sales and use taxes; transportation taxes (nontransit); property transfer taxes; transient lodging taxes; timber yield taxes; aircraft taxes; franchise taxes; fines, forfeitures, and penalties; revenues from use of money and property; motor vehicle in-lieu taxes; trailer

coach in-lieu taxes; homeowner property tax relief; open-space tax relief; and cigarette taxes.

§ 25299.53. Corrective action by regional board or local agency; notice; submission of estimated costs; approval; reimbursement; recovery from owner or operator

(a) A regional board or a local agency taking, or contracting for, corrective action pursuant to subdivision (g) of Section 25299.37 shall, before commencing the corrective action, take both of the following actions:

(1) The regional board or local agency shall notify the board of the planned corrective action. If an owner, operator, or other responsible party is taking the corrective action in accordance with Section 25299.37, the regional board or local agency shall not initiate a corrective action pursuant to this chapter.

(2) If an owner, operator, or other responsible party is not taking or has not taken the action specified in paragraph (1), the regional board or local agency shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate. The regional board or local agency shall obtain approval of the corrective action and the cost estimate before taking, or contracting for, any corrective action.

(b) If the board approves the request of the regional board or local agency made pursuant to paragraph (2) of subdivision (a), the board shall, after making the determination specified in subdivision (c), pay for the costs of corrective action performed by a regional board, local agency, or qualified contractor.

(c) The board shall not make any payment pursuant to subdivision (b) unless the board determines that the owner, operator, or other responsible party of the tank has failed or refused to comply with a final order for corrective action issued pursuant to Section 25299.37 with respect to the unauthorized release of petroleum from the tank.

(d) Upon making any payment to a regional board or local agency pursuant to subdivision (b), the board shall recover the amount of payment pursuant to Section 25299.70

§ 25299.54. Applications to board for satisfaction of claims; eligibility restrictions; liability for corrective action costs; insufficient funds; reimbursement of claimant

(a) Except as provided in subdivisions (b), (c), (d), (e), and (g) an owner or operator, required to perform corrective action pursuant to Section

25299.37, or an owner or operator who, as of January 1, 1988, is required to perform corrective action, who has initiated this action in accordance with Division 7 (commencing with Section 13000) of the Water Code, who is undertaking corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, or Chapter 6.7 (commencing with Section 25280), may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) A person who has failed to comply with Article 3 (commencing with Section 25299.30) is ineligible to file a claim pursuant to this section.

(c) Any owner or operator of an underground storage tank containing petroleum is ineligible to file a claim pursuant to this section if the person meets both of the following conditions:

(1) The person knew, before January 1, 1988, of the unauthorized release of petroleum which is the subject of the claim.

(2) The person did not initiate, on or before June 30, 1988, any corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code concerning the release, or the person did not, on or before June 30, 1988, initiate corrective action in accordance with Chapter 6.7 (commencing with Section 25280) or the person did not initiate action on or before June 30, 1988, to come into compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code concerning the release.

(d) An owner or operator who violates Article 4 (commencing with Section 25299.36) is liable for any corrective action costs that result from the owner's or operator's violation of Article 4 (commencing with Section 25299.36) and is ineligible to file a claim pursuant to this section.

(e) Notwithstanding this chapter, a person who owns a tank located underground that is used to store petroleum may apply to the board for satisfaction of a claim, and the board may pay the claim pursuant to Section 25299.57 without making the findings specified in paragraph (3) of subdivision (d) of Section 25299.57 if all of the following apply:

(1) The tank meets one of the following requirements:

(A) The tank is located at the residence of a person on property used exclusively for residential purposes at the time of discovery of the unauthorized release of petroleum.

(B) The tank owner demonstrates that the tank is located on property which, on and after January 1, 1985, is not used for agricultural purposes, the tank is of a type specified in subparagraph (B) of paragraph (1) of subdivision (x) of Section 25281, and the petroleum in the tank is used solely for the purposes specified in subparagraph (B) of paragraph (1) of subdivision (x) of Section 25281 on and after January 1, 1985.

(2) The tank is not a tank described in subparagraph (A) of paragraph (1) of subdivision (x) of Section 25281 and the tank is not used on or after January 1, 1985, for the purposes specified in that subparagraph.

(3) The claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280), or the claimant is not subject to the requirements of those provisions.

(f) Whenever the board has authorized the prepayment of a claim pursuant to Section 25299.57, and the amount of money available in the fund is insufficient to pay the claim, the owner or operator shall remain obligated to undertake the corrective action in accordance with Section 25299.37.

(g) The board shall not reimburse a claimant for any eligible costs for which the claimant has been, or will be, compensated by another person. This subdivision does not affect reimbursement of a claimant from the fund under either of the following circumstances:

(1) The claimant has a written contract, other than an insurance contract, with another person that requires the claimant to reimburse the person for payments the person has provided the claimant pending receipt of reimbursement from the fund.

(2) An insurer has made payments on behalf of the claimant pursuant to an insurance contract and either of the following apply:

(A) The insurance contract explicitly coordinates insurance benefits with the fund and requires the claimant to do both of the following:

(i) Maintain the claimant's eligibility for reimbursement of costs pursuant to this chapter by complying with all applicable eligibility requirements.

(ii) Reimburse the insurer for costs paid by the insurer pending reimbursement of those costs by the fund.

(B) The claimant received a letter of commitment prior to June 30, 1999, for the occurrence and the claimant is required to reimburse the insurer for any costs paid by the insurer pending reimbursement of those costs by the fund.

(h) The Legislature finds and declares that the changes made to subparagraph (A) of paragraph (1) of subdivision (e) by Chapter 1290 of the Statutes of 1992 is declaratory of existing law.

(i) The Legislature finds and declares that the amendment of subdivisions (a) and (g) by the act amending this section during the 1999-2000 Regular Session is declaratory of existing law.

§ 25299.55. Forms and procedures for claims filed

The board shall prescribe appropriate forms and procedures for claims filed pursuant to Section 25299.54 which shall include, at a minimum, all of the following:

(a) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant's knowledge.

(b) A full description, supported by appropriate evidence from government agencies, of the unauthorized release of petroleum into the environment from an underground storage tank claimed to be the subject of the third-party judgment specified in Section 25299.58 or the corrective action performed pursuant to Section 25299.37.

(c) Certification by the claimant of all costs which have been, or will be, incurred in undertaking corrective action after January 1, 1988.

§ 25299.56. Board determinations of an applicant's eligibility for claim of costs; procedures

(a) The board shall determine an applicant's eligibility for a claim for corrective action costs or third-party compensation costs pursuant to Section 25299.57 or 25299.58 and notify the applicant of that determination within 60 days from the date of the receipt of the fund application. The board may classify the claimant's application pursuant to Section 25299.52 after that 60-day period. If the board sends an applicant a determination of eligibility pursuant to this subdivision, the board shall not revoke that determination of eligibility, unless the application contained fraudulent information or a misrepresentation. However, the board may suspend making a reimbursement for a claim until the claimant corrects any deficiencies that are the basis for the suspension. Reinstatement of reimbursement shall occur when funds are available and that reinstatement shall be made ahead of any new letters of commitment issued as of the date of reinstatement.

(b) A claimant may request review of any claim or portion of a claim not paid. The review shall be conducted and a decision rendered within 30 days from the date of receipt of the request.

(c) A claimant may file a petition for review, in writing, with the board with regard to any unpaid claim that is unresolved to the satisfaction of the claimant upon expiration of the 30-day period specified in subdivision (b) and the board shall take final action on the petition within 90 days of the board's receipt of a complete petition for review, except that if the board initiates an adjudicative proceeding on the petition, the board shall take final action within 270 days of the board's receipt of a complete petition for review.

(d) Final action on a petition taken by the board is a final agency action for the purposes of judicial review of a board decision.

(e) A claimant may, not later than 30 days from the date of final action by the board pursuant to subdivision (c), file with the superior court a petition for writ of mandate for review of the decision. If the claimant does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by the court. Section 1094.5 of

the Code of Civil Procedure shall govern the proceeding for a petition filed pursuant to his subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(f) Except as specified in subdivision (g), the procedures in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to any adjudicative proceedings conducted by the board pursuant to this article.

(g) (1) Notwithstanding subdivision (f), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to any adjudicative proceeding conducted by the board pursuant to this article.

(2) This section is not a limitation on the authority of the board to authorize the use of the procedure provided in article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

§ 25299.57. Maximum payment of costs by board allowed; reimbursement; prepayment; required findings; letter of credit; partial payment; multiple bids

(a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of a corrective action that exceeds the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million five hundred thousand dollars (\$1,500,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner or operator may apply to the board for satisfaction of a claim filed pursuant to this article. It is the intent of the Legislature that claimants applying for satisfaction of claims from the fund be notified of eligibility for reimbursement in a prompt and timely manner and that a letter of credit or commitment that will obligate funds for reimbursement follow the notice of eligibility as soon thereafter as possible.

(b) (1) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary.

(2) The board shall not reject any actual costs of corrective action in a claim solely on the basis that the invoices submitted fail to sufficiently detail the actual costs incurred, if all of the following applies:

(A) Auxiliary documentation is provided which documents to the board's satisfaction that the invoice is for necessary corrective action work.

(B) The costs of corrective action work in the claim are reasonably commensurate with similar corrective action work performed during the same time period covered by the invoice for which reimbursement is sought.

(C) The invoices include a brief description of the work performed, the date that the work was performed, the vendor, and the amount.

(c) For claims eligible for prepayment pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(d) Except as provided in subdivision (j), a claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article

5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(C)(i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(5) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40)) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of credit authorizing payment of the costs from the fund.

(f) The claimant may submit a request for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) Any claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) Any claimant who submits a claim to the board for the payment of professional engineering and geologic work shall submit multiple proposals and fee estimates, as required by the regulations adopted by the board pursuant to Section 25299.77. The claimant's selection of the provider of these services is not required to be based on the lowest estimated fee, if the fee estimate conforms with the range of acceptable costs established by the board.

(3) Any claimant who submits a claim for payment to the board for remediation construction contracting work shall submit multiple bids, as required in the regulations adopted by the board pursuant to Section 25299.77.

(4) Paragraphs (1), (2), and (3) do not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

(h) The board shall provide, upon the request of a claimant, assistance to the claimant in the selection of contractors retained by the claimant to conduct reimbursable work related to corrective actions. The board shall develop a summary of expected costs for common remedial actions. This summary of expected costs may be used by claimants as a guide in the selection and supervision of consultants and contractors.

(i) The board shall pay, within 60 days from the date of receipt of an invoice of expenditures, all costs specified in the work plan developed pursuant to Section 25299.37, and all costs which are otherwise necessary to comply with an order issued by a local, state, or federal agency.

(j) (1) The board shall pay a claim of not more than three thousand dollars (\$3,000) per occurrence for regulatory technical assistance to an owner or operator who is otherwise eligible for reimbursement under this chapter.

(2) For the purposes of this subdivision, regulatory technical assistance is limited to assistance from a person, other than the claimant, in the preparation and submission of a claim to the fund. Regulatory technical assistance does not include assistance in connection with proceedings under Section 25299.39.2 or 25299.56 or any action in court.

(k) (1) Notwithstanding any other provision of this section, the board shall pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank which has been the subject of a completed corrective action and for which additional corrective action is required because of additionally discovered contamination from the previous release, only if the person who carried out the earlier and completed corrective action was eligible for, and applied for, reimbursement pursuant to subdivision (b), and only to the extent that the amount of reimbursement for the earlier corrective action did not exceed the amount of reimbursement authorized by subdivision (a). Reimbursement to a claimant on a reopened site shall occur when funds are available, and reimbursement commitment shall be made ahead of any new letters of commitment to be issued, as of the date of the reopening of the claim, if funding has occurred on the original claim, in which case funding shall occur at the time it would have occurred under the original claim.

(2) For purposes of this subdivision, a corrective action is completed when the local agency or regional board with jurisdiction over the site or the board issues a closure letter pursuant to subdivision (h) of Section 25299.37.

§ 25299.58. Reimbursement of costs by board; limitations; required findings for payment of claim; third party compensation

(a) Except as provided in subdivision (d), if the board makes the determination specified in subdivision (b), the board may only reimburse those costs which are related to the compensation of third parties for bodily injury and property damages and which exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence.

(b) A claim may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant has been ordered to pay a settlement or final judgment for third-party bodily injury or property damage arising from operating an underground storage tank.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(C)(i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility in an amount twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to any contamination having been caused. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner as may be acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280).

(5) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(c) A claimant may be reimbursed by the fund for compensation of third parties for only the following:

(1) Medical expenses.

(2) Actual lost wages or business income.

(3) Actual expenses for remedial action to remedy the effects of damage to the property of the third party caused by the unauthorized release of petroleum from an underground storage tank.

(4) The fair market value of the property rendered permanently unsuitable for use by the unauthorized release of petroleum from an underground storage tank.

(d) The board shall pay a claim submitted pursuant to subdivision (e) of Section 25299.54 for the costs related to the compensation of third parties for bodily injury and property damages which exceed the level of financial responsibility required to be obtained pursuant to paragraph (2) of subdivision (a) of Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence.

§ 25299.59. Limitation on amount of payment on claims

(a) If the board has paid out of the fund for any costs of corrective action, the board shall not pay any other claim out of the fund for the same costs.

(b) Notwithstanding Sections 25299.57 and 25299.58, the board shall not reimburse or authorize prepayment of any claim in an aggregate amount

exceeding one million five hundred thousand dollars (\$1,500,000) less the minimum level of financial responsibility specified in Section 25299.32, for a claim arising from the same event or occurrence. If a claim exceeds one million dollars (\$1,000,000) for an occurrence, the board may only reimburse costs submitted pursuant to Section 25299.57 for those costs in excess of one million dollars (\$1,000,000).

(c) The board may conduct an audit of any corrective action claim honored pursuant to this chapter. The claimant shall reimburse the state for any costs disallowed in the audit. A claimant shall preserve, and make available, upon request of the board or the board's designee, all records pertaining to the corrective action claim for a period of three years after the final payment is made to the claimant.

§ 25299.60. Claims exceeding total money in fund; restrictions on payments

(a) The board shall not pay any claims against or presented to the fund pursuant to this article if the claim exceeds the total money in the fund at any one time. The board shall pay these claims only when additional money is collected, appropriated, or otherwise added to the fund. If the total claims outstanding at any time exceed the current balance of the fund, the board shall pay these claims in full to the extent authorized pursuant to this article.

(b) Any claim filed against the fund pursuant to this article may be paid only out of the fund. This chapter does not authorize the payment by the state of any additional amount with respect to any claim out of any source other than the fund.

(c) (1) Except as provided in paragraph (2), notwithstanding this article, the board shall not pay out any claims pursuant to this article to a claimant if the total amount paid to the claimant is greater than 5 percent of the total amount annually appropriated by the Legislature from the fund for purposes of paying claims pursuant to this article. For purposes of determining the total amount paid to a claimant for purposes of this section, the board shall include any payments made to any person or entity which has a relationship with the claimant specified in subsection (b) of Section 267 of Title 26 of the United States Code.

(2) The board may exempt a claim from the requirements of paragraph (1) if the board determines all of the following:

(A) The exemption would provide for an equitable and timely use of available fund moneys.

(B) The exemption would help to ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment.

(C) All claims subject to the exemption are awarded in accordance with the priority rankings established pursuant to Section 25299.52.

§ 25299.61. Gross negligence or intentional or reckless acts of claimant; nonpayment of claims

The board shall not pay any claims against or presented to the fund pursuant to this article if the claims are in connection with an unauthorized release of petroleum into the environment from an underground storage tank resulting from the gross negligence or the intentional or reckless acts of the claimant

§ 25299.62. Time limit for payment of reimbursement requests

All reimbursement requests that are approved shall be forwarded to the Controller within 10 days from the date of approval, for payment by the Controller.

§ 25299.63. Other remedies; exhaustion of administrative remedies

This article does not require any person to pursue a claim against the board pursuant to this article before seeking any other remedy. This section does not affect the requirement for exhaustion of administrative remedies before obtaining judicial review of any action of the board on a claim or petition for closure of a tank case.

ARTICLE 7. COST RECOVERY, ENFORCEMENT, AND ADMINISTRATION

§ 25299.70. Recovery of costs; extent of liability; civil action; deposit of recovery; lien

(a) Any costs incurred and payable from the fund pursuant to subdivisions (c), (e), and (h) of Section 25299.51 shall be recovered by the Attorney General, upon request of the board, from the owner or operator of the underground storage tank which released the petroleum and which is the subject of those costs or from any other responsible party.

(b) The liability of an owner or operator shall be the full and total costs specified in subdivision (a) if the owner or operator has not complied with the requirements of Article 3 (commencing with Section 25299.30) or Article 4 (commencing with Section 25299.36). The liability of a responsible party who is not an owner or operator shall be the full and total costs specified in subdivision (a).

(c) The amount of costs determined pursuant to this section shall be recoverable in a civil action. This section does not deprive a party of any defense the party may have.

(d) All money recovered by the Attorney General pursuant to this section shall be deposited in the fund.

(e) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, which identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien shall have the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice, unless sooner released or otherwise discharged. Not later than 45 days from the date of receipt of a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In that court action, the governmental agency that incurred the cleanup costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the board for a money judgment.

§ 25299.72. Joining of parties to action

Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures of the type recoverable pursuant to this article.

§ 25299.73. Strict liability; standard

The standard of liability for any costs of corrective action recoverable pursuant to this chapter is strict liability.

§ 25299.74. Effect of indemnification, hold harmless, or similar agreements; entry of judgment; subrogation of claimants' rights by state

(a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to preclude any liability for costs recoverable under this article. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under this chapter.

(b) The entry of judgment against any party to the action does not bar any future action by the fund against any person who is later discovered to be potentially liable for costs paid from the fund.

(c) Payment of any claim by the fund pursuant to this chapter shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the unauthorized release.

§ 25299.75. Effect of chapter on parties' obligations or liabilities under other state or federal laws

(a) Except as provided in Sections 25299.70, 25299.72, and 25299.73, this chapter does not affect or modify the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from an unauthorized release of petroleum or for corrective action or the costs of corrective action.

(b) This chapter shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.

§ 25299.76. Violations; civil penalty

(a) Any person who violates any requirement of Article 3 (commencing with Section 25299.30) or Article 4 (commencing with Section 25299.36) is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each underground storage tank for each day of violation.

(b) The state or a local agency may bring an action in superior court to impose the civil penalty specified in subdivision (a).

(c) The board or a regional board may impose the civil penalty specified in subdivision (a) pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(d) In determining the amount of any liability imposed under this section, the superior court, the board, or the regional board shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, the economic benefits or savings, if any, resulting from the violations, and other matters as justice may require.

(e) Remedies under this section are in addition to, and do not supersede or limit, any other civil or criminal remedies, except that no civil penalties shall be recovered under this section for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code.

§ 25299.77. Adoption of regulations; emergency regulations

(a) The board shall adopt regulations to implement this chapter. In adopting these regulations, the board shall ensure that the regulations are

consistent with this chapter, Chapter 6.7 (commencing with Section 25280), and the requirements for state programs implementing the federal act. When adopting regulations to implement this chapter, including the adoption of regulations establishing requirements for demonstrating financial responsibility pursuant to Article 3 (commencing with Section 25299.30), and establishing corrective action requirements pursuant to Article 4 (commencing with Section 25299.36), the board may adopt the regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The adoption of any regulations pursuant to this section that are filed with the Office of Administrative Law on or before January 1, 1995, shall be deemed to be an emergency necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulation adopted by the board pursuant to this subdivision shall not be repealed by the Office of Administrative Law, and shall remain in effect until revised by the board.

§ 25299.78. Agency or board authority to inspect underground storage tank areas; owner or operator duty to furnish information

(a) To carry out the purposes of this chapter, any authorized representative of the local agency, regional board, or board shall have the authority specified in Section 25185, with respect to any place where underground storage tanks are located, and in Section 25185.5, with respect to any real property which is within 2,000 feet of any place where underground storage tanks are located.

(b) An owner or operator shall furnish, under penalty of perjury, any information on fees imposed pursuant to Article 5 (commencing with Section 25299.40), financial responsibility, unauthorized releases, or corrective action as the local agency, regional board, or board may require.

§ 25299.79. Cost recovery

The costs specified in subdivision (d) of Section 25299.51 are not recoverable pursuant to this article.

ARTICLE 8. LONG TERM STUDY

§ 25299.80. Report; contents

On or before January 1, 1993, the board, in consultation with the commissioner, shall prepare and submit to the Legislature a report containing, but not limited to, all of the following information:

- (a) A summary of corrective action taken pursuant to this chapter.
- (b) Summary data on claims paid out of the fund.
- (c) An assessment of the availability of private insurance for coverage of unauthorized releases of petroleum from underground storage tanks.
- (d) Data on the ability of owners or operators of underground storage tanks to comply with alternative mechanisms for demonstrating financial responsibility, such as financial guarantees.
- (e) Summary data on the low-interest loan program established pursuant to Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code for the repair or replacement of leaking underground storage tanks.
- (f) Recommendations for a permanent program to further the intent of this chapter, including recommendations as to the use of the insurance fund to provide coverage for owners and operators of underground storage tanks for liability under federal law arising out of unauthorized releases of petroleum into the environment from these tanks.

ARTICLE 8.5. BLYTHE ENVIRONMENTAL REMEDIATION DEMONSTRATION PROJECT (REPEALED AS OF 1/1/2000)

ARTICLE 9. SUNSET PROVISION

§ 25299.81. Repeal of chapter; exceptions; effect of repeal on certain rights and obligations

(a) Except as provided in subdivisions (b) and (c), this chapter shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2011, deletes or extends that date.

(b) Notwithstanding subdivision (a), Article 1 (commencing with Section 25299.10), Article 2 (commencing with Section 25299.11), and Article 4 (commencing with Section 25299.36) shall not be repealed and shall remain in effect on January 1, 2011.

(c) The repeal of certain portions of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights and obligations:

(1) The filing and payment of claims against the fund, including the costs specified in subdivisions (c), (e), and (h) of Section 25299.51, and claims for commingled plumes, as specified in Article 11 (commencing with Section 25299.90), until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of January 1, 2011, due and payable to the board under the terms of Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code.

(3) The recovery of moneys reimbursed to a claimant to which the claimant is not entitled, or the resolution of any cost recovery action.

(4) The collection of unpaid fees that are imposed pursuant to Article 5 (commencing with Section 25299.40), as that article read on December 31, 2010, or have become due before January 1, 2011, including any interest or penalties that accrue before, on, or after January 1, 2011, associated with those unpaid fees.

(c) The Board shall annually, on or before September 30, prepare and submit a report to the Legislature which describes the status of the fund and sets forth recommendations for legislative changes to improve the efficiency of the program established pursuant to this chapter, with a special emphasis on expediting environmental cleanup and the distribution of money from the fund, including alternative methods for the distribution of that money

(d)

ARTICLE 11. COMMINGLED PLUME ACCOUNT

§ 25299.90. Legislative findings and declarations

(a) Commingled plumes of petroleum contaminated groundwater involve serious water quality impacts.

(b) Unauthorized releases from underground storage tanks are a major source of commingled plumes of petroleum contaminated groundwater.

(c) Unless corrective action is performed in a coordinated manner, remedial action of commingled plumes may be ineffective.

(d) Disagreement over shared liability among parties responsible for underground storage tank leaks which contributed to commingled plumes may result in substantial expenditures for legal costs and the expenses of necessary cleanup.

(e) Reimbursing claimants jointly will result in more efficient cleanups, lower total corrective action costs, and reduced legal costs for commingled plumes.

§ 25299.91. Definitions

As used in this article, the following terms have the following meaning:

(a) "Commingled plume" means the condition that exists when groundwater contaminated with petroleum from two or more discrete

unauthorized releases have mixed or encroached upon one another to the extent that the corrective action performed on one plume will necessarily affect the other. A commingled plume does not include either of the following:

(1) Contaminated groundwater plumes resulting from unauthorized releases or discharges from a single site.

(2) Soil contamination, unless it can be demonstrated that the contaminated soil is an immediate threat to groundwater.

(b) "Contributing site" means a site on which an unauthorized release or discharge of waste has occurred or is occurring and has impacted or threatens to impact groundwater.

§ 25299.92. Funding

A sum not to exceed ten million dollars (\$10,000,000) from Item 3940-001-0439 of Section 2.00 of the Budget Act of 1996 (Ch. 162, Stats. 1996) shall be available for expenditure for the 1996-97 fiscal year for the purposes of this article. In subsequent fiscal years, it is the intent of this Legislature that an appropriation be made in the annual Budget Act to carry out this article.

§ 25299.93. Joint claims for reimbursement; corrective action costs; third-party reimbursement

(a) A joint claim may be submitted for reimbursement of corrective action costs for a commingled plume if all of the following conditions are met:

(1) Each person named in the joint claim is an owner, operator, or other responsible party ordered to perform corrective action or remedial action pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code.

(2) After performing a soil and water investigation in accordance with Article 11 (commencing with Section 2720) of Chapter 16 of Division 3 of Title 23 of the California Code of Regulations, the joint claimants demonstrate to the satisfaction of the local or regulatory agency and the board that a commingled plume exists and that every identified unauthorized release or discharge has contributed substantially to the commingled plume.

(3) At least 85 percent of the commingled plume is comprised of petroleum contamination resulting from an unauthorized release from a tank whose owner or operator is eligible for payment of a claim pursuant to Section 25299.54.

(4) At least two contributing sites involve an unauthorized release.

(5) The joint claimants have coordinated corrective action as soon as practicable.

(6) The joint claimants agree to seek preapproval of corrective action costs in accordance with subdivision (c) of Section 25299.57.

(7) The joint claimants have entered into a written agreement that provides for a coordinated corrective action plan. The written agreement shall require the joint claimants to do the following:

(A) Appoint one of the joint claimants to represent the joint claimants for purposes of interacting with the local or regulatory agency and the board.

(B) Permit the joint claimants reasonable access to contributing sites as necessary to perform corrective action.

(C) Identify any corrective action costs incurred at contributing sites and assess if any of those costs may be eligible for reimbursement under this chapter.

(D) Estimate responsibility among the joint claimants and provide a formula or method for apportioning costs that are not eligible for reimbursement under this chapter or which exceed the limitations prescribed in Section 25299.94.

(E) Identify all money or other compensation received by any joint claimant which is related to contamination at any contributing site or the commingled groundwater plume.

(b) A joint claim may be submitted for reimbursement of third parties as provided in Section 25299.58 subject to both of the following conditions:

(1) The conditions set forth in subdivision (a) are satisfied.

(2) An owner or operator named in the joint claim is liable for a third-party compensation claim.

§ 25299.94. Payment by board; corrective action costs and third-party compensation claims

(a) The board may pay the cost of corrective actions and third-party compensation claims that are submitted as part of a joint claim and which exceed the amount specified in subdivision (b), but do not exceed an amount equal to one million five hundred thousand dollars (\$1,500,000) per occurrence, for which an owner or operator named in the joint claim is eligible for reimbursement under this chapter. If a claim from a contributing site exceeds one million dollars (\$1,000,000) for an occurrence, the board may only reimburse costs submitted pursuant to Section 25299.57 for those costs in excess of one million dollars (\$1,000,000).

(b) For each joint claim, the board may only pay for the costs of corrective action and third-party compensation claims that exceed the aggregate of the levels of financial responsibility required pursuant to Section 25299.32 for each owner or operator named in the joint claim.

(c) The costs of corrective action determined eligible for reimbursement shall be paid before third-party compensation claims.

(d) Except as provided in paragraph (1) of subdivision (e), reimbursement for costs of corrective action is limited to costs incurred by the joint claimants after executing an agreement under paragraph (7) of subdivision (a) of Section 25299.93.

(e) Both of the following costs of corrective action incurred at a contributing site may be reimbursed in accordance with subdivision (f):

(1) Costs incurred by an owner or operator before executing an agreement described in paragraph (7) of subdivision (a) of Section 25299.93.

(2) Costs relating to unauthorized releases that do not contribute to the commingled plume, but which are included in the occurrence which is the subject of the joint claim.

(f) An owner or operator may seek reimbursement of costs described in subdivision (e) by doing either of the following:

(1) Including a payment request for those corrective action costs with the claim filed under this article.

(2) Filing a claim or maintaining an existing claim under Article 6 (commencing with Section 25299.50).

(g) Any reimbursement received pursuant to subdivision (f) and any amount excluded from the payment based on the amount of financial responsibility required to be maintained shall be applied toward the limitations prescribed in subdivision (a).

(h) The board shall not reimburse a claimant or joint claimant for any eligible costs for which the claimant or joint claimant has been, or will be, compensated by another party.

§ 25299.95. Duplicative claims; application of section

(a) An owner or operator named in a joint claim filed under this article may not file or maintain a claim under Article 6 (commencing with Section 25299.50) for the same occurrence.

(b) When a joint claim under this article has been approved, the board shall remove any claims filed under Article 6 (commencing with Section 25299.50) by an owner or operator named in the approved claim.

(c) If an owner or operator withdraws from a claim filed under this article, the owner or operator may submit or resubmit a claim pursuant to Article 6 (commencing with Section 25299.50).

(d) Any claims filed pursuant to subdivision (c) shall be assigned to a priority class pursuant to Section 25299.52 and ranked in accordance with the procedures contained in regulations adopted by the board pursuant to Section 25299.77.

(e) This section does not apply to a claim filed for a separate occurrence at a contributing site or a claim authorized pursuant to paragraph (2) of subdivision (f) of Section 25299.94.

§ 25299.96. Priority for payment

The priority for payment of a joint claim submitted under this article shall be based on the date on which the board receives a complete application. For purposes of this section, an application shall not be considered complete until the applicable local agency or other regulatory agency confirms the existence of a commingled plume and the joint claimant submits an agreement which complies with paragraph (7) of subdivision (a) of Section 25299.93.

ARTICLE 12. DRINKING WATER WELL PROTECTION

§ 25299.97. GIS mapping system; GIS Mapping and Data Management Advisory Committee; pilot projects; definitions

(a) For the purposes of this article, the following definitions shall apply:

(1) "Public drinking water well" means a wellhead that provides drinking water to a public water system, as that term is defined in Section 116275, that is regulated by the State Department of Health Services and that is subject to Section 116455.

(2) "MTBE" means methyl tertiary-butyl ether.

(3) "GIS mapping system" means a geographic information system that collects, stores, retrieves, analyzes, and displays environmental geographic data in a data base that is accessible to the public.

(4) "Motor vehicle fuel" includes gasoline, natural gasoline, blends of gasoline and alcohol or gasoline and oxygenates and any inflammable liquid, whatever name the liquid may be known or sold, which is used or usable for propelling motor vehicles operated by the explosion type engine. It does not include kerosene, liquefied petroleum gas, or natural gas, in liquid or gaseous form.

(5) "Oxygenated motor vehicle fuel" is motor vehicle fuel, as defined in paragraph (4), that meets the federal definition for "Oxygenated Fuel" as defined in Section 7545(m) of Title 42 of the United States Code.

(6) "Oxygenate" means an organic compound containing oxygen that has been approved by the United States Environmental Protection Agency as a gasoline additive to meet the requirements for an "oxygenated fuel" pursuant to Section 7545 of Title 42 of the United States Code.

(b) The State Water Resources Control Board shall upgrade the data base created by Section 25299.39.1. This upgrade shall include the establishment

of a statewide GIS mapping system as described in this section only upon an appropriation by the Legislature for this purpose.

(c) (1) For purposes of subdivision (b), the board shall create a GIS Mapping and Data Management Advisory Committee. The committee shall give the board advice on location standards, protocols, metadata, and the appropriate data to expand the data base to create a cost-effective GIS mapping system that will provide the appropriate information to allow agencies to better protect public drinking water wells and, if feasible, nearby aquifers that are reasonably expected to be used as drinking water, from contamination by motor vehicle fuel from underground storage tanks and intra- and interstate pipelines that are regulated by the State Fire Marshal pursuant to the California Pipeline Safety Act of 1981, Chapter 5.5 (commencing with section 51010.5) of Part 1 of Division 1 of Title 5 of the Government Code.

(2) The advisory committee shall include, at a minimum, members from appropriate state and local agencies, affected industry and business, the water agencies that provide drinking water in Santa Monica, the water agencies that provide drinking water in the Santa Clara Valley, nonprofit environmental groups dedicated to the conservation and preservation of natural resources, and underground storage tank owners.

(d) (1) The board shall create two pilot projects, the Santa Monica Groundwater Pilot Project and the Santa Clara Valley Groundwater Pilot Project, which shall terminate on July 1, 1999.

(2) The board shall create the pilot projects with the advice of the advisory committee so as to expedite and prioritize the upgrading of the data base for those regions of the state where groundwater provides, or would be called on in an emergency to provide, a significant portion of the region's drinking water.

(3) The board shall use the pilot projects to define and assess the parameters of the data base, identify data needs, develop opportunities to electronically link data bases and electronic submission of information, offer access to the public via the Internet, streamline existing processes, and work out the details for data management and a GIS mapping system as described in this article.

(4) The pilot project shall study appropriate notification to public water systems and response times.

(e) To upgrade the data base as required by this section, the board, in consultation with the advisory committee, shall do all of the following:

(1) Coordinate with the Department of Water Resources and the State Department of Health Services to obtain the location of existing drinking water wells and appropriate water resource and quality data to meet the requirements of this article.

(2) Coordinate with local agencies authorized to implement this chapter to obtain the location of all underground storage tanks that store motor vehicle fuel that are within 1,000 feet of a public drinking water well.

(3) Coordinate with local agencies authorized to implement this chapter to add the location of all known releases of motor vehicle fuel from underground storage tanks that are within 1,000 feet of a drinking water well.

(4) Coordinate with the State Fire Marshal to add the location and leak history of all pipelines or segments of pipelines that transport motor vehicle fuel and that are regulated by the State Fire Marshal pursuant to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code that are within 1,000 feet of an existing public drinking water well.

(f) The board may expend up to four hundred thousand dollars (\$400,000) from the Underground Storage Tank Cleanup Fund for the purposes set forth in Section 25299.36 to fund the GIS mapping system projects referred to in this section.

(g) On or before July 1, 1999, based upon, among other things, an evaluation of the pilot projects, the board shall report to the Legislature and the Governor on the feasibility and appropriateness of establishing a statewide GIS mapping system as described in this section.

ARTICLE 13. DRINKING WATER EMERGENCY RESPONSE FUNDING

§ 25299.99. Expenditures; reimbursements (REPEALED AS OF 1/1/2000)

§ 25299.99.1. Contaminated well; drinking water treatment and research fund; expenditures

(a) The board shall annually transfer five million dollars (\$5,000,000) from the Underground Storage Tank Cleanup Fund, created pursuant to Section 25299.50, to the Drinking Water Treatment and Research Fund created by Section 116367, to be expended for the purposes set forth in Section 116367 if a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(b) This section shall become operative June 30, 1999.

§ 25299.99.2. Duration of article

This article, notwithstanding Section 25299.81, shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

§ 25299.99.3. Contamination of drinking water well; transfer of funds for purposes set forth in Section 116367

In any fiscal year, if the department determines that less than two million dollars (\$2,000,000) of unencumbered funds remain in the fund, it shall notify the board and the board shall transfer five million dollars (\$5,000,000) from the Underground Storage Tank Cleanup Fund to the Drinking Water Treatment and Research Fund, to be expended for the purposes set forth in Section 116367, if a drinking water well has been contaminated with oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.